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Paper No. _____

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In re Application of
Dennis Stamires et all : COPY MAILED
Application No. 09/246,691 :
Filed: February 9, 1999 : AUG 05 2002
Attorney Docket No. WPB 40864B : OFFICE OF PETITIONS

AND

DECISION ON PETITION

In re Application of :
Dennis Stamires et al :
Application No. 10/042,730 :
Filed: March 15, 2002 :
Attorney Docket No. WPB 40864B :

This is a decision on the petition under 37 CFR 1.53(e), filed July 1, 2002, to convert the continued prosecution application request under 37 CFR 1.53(d) filed in the U.S. Patent and Trademark Office (USPTO) on March 15, 2002 to a continuing application under 37 CFR 1.53(b) and to accord the continuing application a filing date of March 15, 2002.

The petition is granted.

A request for a CPA based on prior application No. 09/246,691 was deposited on March 15, 2002, along with a petition to withdraw from issue under 37 CFR 1.313(c)(3). The issue fee was paid in the prior application on February 14, 2002. Unfortunately, the petition and the file of the prior application were not received by the appropriate official within sufficient time to avert issuance of the prior application and the prior application was patented on April 23, 2002. Accordingly, the petition to withdraw from issue filed on March 15, 2002 was dismissed as moot in a decision mailed May 20, 2002

Since the prior application has issued as a patent, the CPA request cannot be processed as a proper CPA.

The present petition requests that the request for a CPA be treated as a continuation application filed under 37 CFR 1.53(b). The petition is accompanied by what applicant claims as a copy of original Application No. 09/246,691 (specification, claims, and drawings), along with a copy of a signed Declaration and Power of Attorney, and a preliminary amendment.

The instant continuation application under 37 CFR 1.53(b) filed on March 15, 2002 has been assigned application No. 10/042,730. All further communications regarding this application should be directed to Application No. 10/042,730.

The CPA papers and IDS filed in the parent application have been placed in Application No. 10/042,730.

The \$740 filing fee paid in the CPA on March 15, 2002 will be applied towards the filing fee for Application No. 10/042,730. The \$130 petition fee submitted with the petition on July 1, 2002 is unnecessary and will be credited to petitioner's Deposit Account No. 15-0461.

Application No. 09/246,691 is being forwarded to Files Repository.

Application No. 10/042,730 is being forwarded to Initial Patent Examination Division for processing as a continuation application under 37 CFR 1.53(b), not as a CPA under 37 CFR 1.53(d), with a filing date of March 15, 2002, using the copy of the specification, claims, drawings and declaration supplied on March 15, 2002. No surcharge is required in Application No. 10/042,730

Any questions concerning this decision on petition may be directed to Frances Hicks at (703) 305-8680.



Brian Hearn
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